

## 37 Am. Jur. 2d Fraud and Deceit § 119

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### Fraud and Deceit

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#### IV. False Representations

##### F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

###### 2. Knowledge of Falsity

### § 119. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Fraud 13(2)

#### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 207](#) (Instructions to jury—Elements of fraud—General form)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 224](#) (Instruction to jury—Liability for making representations with no apparent ground for believing representations are true)

Under the rule prevailing in most jurisdictions, in order to sustain a charge of fraud in the making of a false representation, it must appear either that the party making it knew that it was false,<sup>1</sup> or else that it was made under such circumstances as to raise a presumption of knowledge<sup>2</sup> although it may also be sufficient if, for example, it was made recklessly and willfully without regard to its consequences, and with an intent to mislead and deceive the plaintiff.<sup>3</sup>

#### Caution:

The Restatement Second, Torts takes the position that a misrepresentation is fraudulent if the maker: (1) knows or believes that the matter is not as he or she represents it to be; (2) does not have the confidence in the accuracy of his or her representation that

the maker states or implies; or (3) knows that he or she does not have the basis for his or her representation that the maker states or implies.<sup>4</sup>

Questions of fact are usually presented by issues concerning whether the defendant had knowledge of the truth or falsity of a representation,<sup>5</sup> and such questions warrant submission to the jury.<sup>6</sup>

While the law raises no presumption of knowledge from the mere fact of falsity,<sup>7</sup> there are cases in which false representations may constitute fraud even though the party making them did not actually know that they were false.<sup>8</sup>

It has been held that in order to be fraudulent, a statement must be known to be false when it is communicated to another.<sup>9</sup> However, even where knowledge of the falsity of the representations is necessary to constitute fraud, there is authority that the party making the representations need not have actually known them to be false at the time when they were made.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In order to establish a claim for constructive fraud under Arkansas law, a plaintiff must show that defendant knows the misrepresentations to be false, or not knowing, asserts them to be true; plaintiff need not show moral guilt, purpose or intent of the defendant. [Ramthun v. Bryan Career College-Inc., 93 F. Supp. 3d 1011 \(W.D. Ark. 2015\)](#).

Law firm that purchased attorney's law firm before he died failed to establish fraudulent inducement and fraudulent concealment claims against attorney's widow, absent showing that she had knowledge that the alleged misrepresentations and omissions attributed to her and attorney were false and that she intended to induce law firm's reliance. [Hogan Willig, PLLC v. Kahn, 145 A.D.3d 1619, 44 N.Y.S.3d 321 \(4th Dep't 2016\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

1 OCM Principal Opportunities Fund v. CIBC World Markets Corp., 157 Cal. App. 4th 835, 68 Cal. Rptr. 3d 828 (2d Dist. 2007), as modified, (Dec. 26, 2007); [Holmes v. Grubman, 286 Ga. 636, 691 S.E.2d 196 \(2010\)](#); [Van Sickle Const. Co. v. Wachovia Commercial Mortg., Inc., 783 N.W.2d 684 \(Iowa 2010\)](#); [Wilkinson v. Shoney's, Inc., 269 Kan. 194, 4 P.3d 1149 \(2000\)](#); [Cumis Ins. Society, Inc. v. BJ's Wholesale Club, Inc., 455 Mass. 458, 918 N.E.2d 36 \(2009\)](#); [Tessier v. Rockefeller, 162 N.H. 324, 33 A.3d 1118 \(2011\)](#).

A defendant cannot be liable in fraud for misrepresenting a fact that it has no knowledge is false. [RD & J Properties v. Lauralea-Dilton Enterprises, LLC, 165 N.C. App. 737, 600 S.E.2d 492 \(2004\)](#).

A claim that an Internet marketing company violated Washington's Commercial Electronic Mail Act by sending unsolicited spam, which either misrepresented the point of origin or contained false or misleading information on the subject line, did not "sound in fraud" so as to trigger heightened pleading requirements for fraud, where the Act did not require that the sender "know" that the information in the subject line or

transmission path of the email was "false or misleading." *Gordon v. Impulse Marketing Group, Inc.*, 375 F. Supp. 2d 1040, 10 A.L.R.6th 681 (E.D. Wash. 2005).

2           *Smith v. De Metre*, 119 Vt. 73, 118 A.2d 346, 58 A.L.R.2d 1 (1955).

3           *Brodeur v. American Home Assur. Co.*, 169 P.3d 139 (Colo. 2007).

4           Recklessness, generally, see § 122.

5           Restatement Second, Torts § 526.

6           *Iasigi v. Brown*, 58 U.S. 183, 17 How. 183, 15 L. Ed. 208, 1854 WL 7486 (1854); *Worcester Felt Pad Corp. v. Tucson Airport Authority*, 233 F.2d 44, 59 A.L.R.2d 1121 (9th Cir. 1956).

7           *Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & Co.*, 312 U.S. 410, 312 U.S. 668, 61 S. Ct. 623, 85 L. Ed. 920 (1941).

8           *Smith v. De Metre*, 119 Vt. 73, 118 A.2d 346, 58 A.L.R.2d 1 (1955).

9           *Bobby Jones Garden Apartments, Inc. v. Suleski*, 391 F.2d 172 (5th Cir. 1968); *Kroninger v. Anast*, 367 Mich. 478, 116 N.W.2d 863 (1962).

10          As to where there is a duty to know the truth, see § 121.

              As to where statements are made recklessly, see § 122.

9           *Owens-Corning Fiberglas Corp. v. Mayor and City Council of Baltimore City*, 108 Md. App. 1, 670 A.2d 986 (1996).

10          *Donnell v. C.R. Disharoon Co.*, 32 F.2d 151 (C.C.A. 4th Cir. 1929); *Schaffner v. National Supply Co.*, 80 W. Va. 111, 92 S.E. 580 (1917).